

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 040/00240/2019

Date of Order: This, the 26<sup>th</sup> day of July 2019

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER**

Kifayat Ullah Khan  
S/o Hidayat Ullah Khan  
Aged about 59 years  
529/932, Nai Basti, Rahim Nagar – 2  
Mahanagar, Bakshi Ka Talab  
Lucknow, Uttar Pradesh.

Working as AE (Civil) at GE, Jorhat  
Military Engineering Service.

**...Applicant**

By Advocates: Sri R. Sarma

-Versus-

1. Union of India  
Represented by its Secretary  
Ministry of Defense, Govt. of India  
Room No. 234, South Block  
Chanakya Bhawan, New Delhi – 110011.
2. The Director General, Personnel  
Military Engineering Service  
Engineer-In-Chief's Branch  
Integrated Headquarter of MoD (ARMY)  
DHQ PO, New Delhi – 110001.
3. The Engineer-in-Chief  
Military Engineering Service  
E-IN-C's Branch, IHQ of MoD (A)  
Kashmir House, New Delhi – 110001.
4. HQ Chief Engineer, Shillong Zone  
Spread Eagle Falls, Shillong – 793011.

5. Chief Engineer, Eastern Command  
Kolkata Headquarters, Eastern Command  
Engrs Branch, Pin – 908540.
6. Commander Works Engineer  
Military Engineering Services, DINJAN  
Pin – 900284.
7. GE Jorhat, MES Gate Rawriah  
Jorhat, Pin – 785005.

**...Respondents**

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**O R D E R (ORAL)**

**MANJULA DAS, JUDICIAL MEMBER:**

On being mentioned by Sri R. Sarma, learned counsel for the applicant, this O.A. has been taken up today as unlisted.

2. By this O.A., applicant makes a prayer to set aside and quash the impugned transfer order dated 28.12.2018 and 13.03.2019 (so far the applicant is concerned) issued by the office of the Engineer in Chief, Military Engineering Service whereby the applicant was transferred from GE Jorhat to GE (I)

(P) (Fly), Kanpur as AGE T. Applicant also prays for setting aside the movement order dated 20.07.2019.

3. Sri R. Sarma, learned counsel appearing on behalf of the applicant submits that initially the applicant was posted at GE, Kanpur. After serving there for about 4 (four) years, he was transferred to GE (Factory) Kanpur. During his service as JE (Civil), he was posted/transferred for five more times to various stations. After serving for about 27 years he was promoted to the post of Assistant Engineer, Civil and posted at GE (South) Delhi vide order dated 21.07.2011. Immediately, thereafter vide order dated 27.07.2011, he was transferred/posted as GE (West) Delhi. While serving at GE (West) Delhi, he was again transferred to GE (North), Delhi in the month of February, 2012. According to the learned counsel, although frequent transfer orders caused difficulty to him, but considering the fact that he was stationed at Delhi, therefore, he did not make any objection.

4. Learned counsel submits that after serving for about 1 year at GE (N) Delhi, the applicant was again transferred to GE, Kanpur on May 2012 on compassionate ground to look after his ailing father. According to the learned counsel,

although the tenure of posting on compassionate appointment is for two years but he was again transferred to GE (I) Girinagar on May 2013 i.e. immediately after completion of one year and then again from GE (I) Girinagar to MAP (Lucknow) on November 2016.

5. Learned counsel further submits that vide order dated 05.05.2017, the applicant was asked to join at Jorhat and vide order dated 09.12.2017, he was released from GE (Girinagar) to GE Jorhat. The applicant joined at Jorhat on 1<sup>st</sup> January 2018. His tenure of two years will be over by 31.12.2019. However, before completion of his tenure, he will retire on superannuation on 30.11.2019. The applicant has only 4 (four) months left for his retirement.

6. Learned counsel has pointed out that the office of the applicant i.e. GE, Jorhat vide office letter No. P/471271/KUK/01/E (Pen) dated 04.02.2019 had asked the applicant to submit paper/personal documents for progress of terminal benefits. In terms of the said office letter, the applicant submitted his documents by letter No. MES/P/471271/KUK/01/E1 (Pen) dated 25.02.2019. His documents were forwarded by the GE Jorhat to all higher Head Quarters

vide letter No. MES/471271/Pers/03/E1 dated 11.03.2019. According to the learned counsel, the pension papers have been already submitted to CDA, Guwahati.

7. Learned counsel argued that vide order dated 28.12.2018, as many as 132 Nos. of Officers were transferred from one station to another allegedly in the interest of State. The applicant was also transferred from GE Jorhat to GE (I) (P) (Fly) Kanpur on the ground that the present posting of the applicant is choice posting to Hard Station. According to the learned counsel, impugned transfer order was passed on 28.12.2018 and by an order dated 13.03.2019, modification was made in the said transfer order. Being aggrieved by the order dated 28.12.2018 and 13.03.2019, the applicant submitted a representation before the Director General (Pers) praying for cancellation of his transfer order on the ground that his present posting is a tenure posting and before completion of his tenure, he should not be transferred.

8. According to the learned counsel, at the fag end of his service, the applicant has been sought to be transferred which is not appreciable inasmuch as applicant has only 4 (four) months left for his retirement.

9. I have heard the learned counsel for the applicant. Perused the pleadings and the documents relied upon. No doubt, the department is the best suited to judge as to the existence of exigencies of such transfer who should be transferred where. Same time, it should not be given by that the power of judicial review could very well be exercised by a court of law if such transfer indicated hardship factor in compliance with such a transfer order. Moreover, it is the policy of the Govt. of India that in case of an officer due to superannuation, posting to station of choice shall be given due weightage. There is an objective based on consideration of welfare behind such provision in the transfer policy as it would enable a person about to retire after a long and devoted service to make arrangements for settling down thereafter with her family, acquire a house if not already done and to make necessary arrangement for her superannuated life. In **Union of India Vs. Dr. Umesh Kumar Mishra WA No. (SH) 17/12**, Hon'ble Gauhati High Court has held that – “Fairness requires that if a policy has been laid down, the same may be deviated from only if there is any reason to do so. If no reason is forthcoming, the exercise of power of transfer in violation of a laid down policy may be held to be arbitrary.”

10. In the present case, I have noted that, applicant will retire 30.11.2019. Only about 4 (four) months left of his service. In **Narayan Choudhury Vs. State of Tripura & Ors. WP(C) No. 239/1999** rendered in **(2000) 1 GLR 519** where the Hon'ble Gauhati High Court of Agartala Bench has held that – “The petitioner is retiring towards the end of 2000 and he has to serve hardly one and half years, no practical purpose will be served by asking the writ petitioner to proceed to his place of posting at Gomit just for a period of 5/6 months”.

I find that the present case is squarely covered with the above case of **Narayan Choudhury Vs. State of Tripura** (supra).

11. By taking into consideration the entire conspectus of the case as well as ratio laid down by the Hon'ble Gauhati High Court mentioned above, I direct the respondent authority to allow the applicant to continue in his present place at GE, Jorhat till his date of retirement.

12. In view of the above, the impugned transfer order No. MES/47/2018 dated 28.12.2018/13.03.2019, so far the applicant is concerned, is hereby set aside. Consequently,

Movement order No. 1304/541/EIA dated 20.07.2019 is also quashed and set aside.

13. With the above observations and directions, O.A. stands disposed of accordingly, at the admission stage. No order as to costs.

**(MANJULA DAS)**  
**MEMBER (J)**

**PB**